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**Pro-Tec Fireproofing, Inc. and Operative Plasterers
and Cement Masons International Association,
Local 797, AFL-CIO. Case 28-CA-19588**

July 29, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on August 12, 2004, the General Counsel issued the original complaint on September 30, 2004, against Pro-Tec Fireproofing, Inc., the Respondent, alleging that it had violated Section 8(a)(1) and (5) of the Act by refusing to provide the Union with requested information. The Respondent filed an answer.

Subsequently, on January 5, 2005, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director on that same date. The settlement agreement required the Respondent to, among other things, (1) provide the Union with the information requested in the Union's July 7, 2004 letter and (2) post a notice to employees regarding the complaint allegations. The settlement agreement also provided that

Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.

On March 10, 2005, the Regional Director set aside the settlement agreement on the grounds that the Respondent had failed to comply with the terms of the settlement agreement. On March 28, 2005, the Regional Director issued a new complaint (the complaint) alleging the same 8(a)(1) and (5) violation as the original complaint.

The complaint provided that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent was required to file an answer to the complaint within 14 days from service of it, and that unless the Respondent did so, all the allegations of the complaint would be considered to be admitted as true and would be so found by the Board. By letter dated April 12, 2005, counsel for the General Counsel again served the complaint on the Respondent and advised it that unless the Respondent filed an answer by April 20,

2005, a Motion for Default Judgment would be filed.¹ The Respondent has not filed an answer to the complaint.

On April 25, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On May 4, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed within 14 days of service of the complaint, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 12, 2005, notified the Respondent that unless an answer was received by April 20, 2005, a Motion for Default Judgment would be filed.

Under the terms of the settlement agreement, set forth above, the Respondent's answer filed to the original September 30, 2004 complaint was withdrawn when the Regional Director approved the settlement agreement on January 5, 2005. Consequently, as that answer no longer existed, the Respondent was obligated to file an answer to the complaint issued on March 28, 2005. As stated above, however, the Respondent has failed to file an answer to that complaint.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

¹ The complaint was sent by certified mail to the Respondent's street address on March 28, 2005. The General Counsel has not received a postal return receipt for the March 28 service of the complaint. The complaint and accompanying letter were sent by certified and regular mail to the Respondent's street address and post office box address on April 12, 2005. Both the certified and regular mail services of April 12 to the Respondent's street address have been returned by the Postal Service as "undeliverable." In addition, the General Counsel has not received a postal return receipt for the certified mail service of the complaint and letter sent to the Respondent's post office box on April 12. However, the April 12 letter and the accompanying copy of the complaint sent by regular mail to the Respondent's post office box have not been returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g. *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. Further, the failure of the Postal Service to return the copy of the complaint and letter that were served on April 12 by regular mail to the Respondent's post office box indicates actual receipt of those documents. See *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a Washington corporation with its principal office and place of business in Ridgefield, Washington, has been engaged in business as a fireproofing contractor in the building and construction industry, and has provided services as a subcontractor on new school construction jobsites in Clark County, Nevada.

During the 12-month period ending August 12, 2004, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in states other than the State of Washington.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Operative Plasterers and Cement Masons International Association, Local 797, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Joseph Turi	Owner
Krista Lee Blair	Owner
Steve Staats	Vice President

The employees of the Respondent referred to in articles 1.01 and 1.02 of the collective-bargaining agreement described below, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On or about July 7, 2003, the Respondent designated the Associated General Contractors, Las Vegas Chapter (the AGC) as its bargaining representative and became signatory to the collective-bargaining agreement between the Union and the AGC, effective from July 1, 2002 to June 30, 2005 (the Agreement), and agreed to be bound to such future agreements unless timely notice was given.

Since at least on or about July 7, 2003, the Respondent, an employer engaged in the building and construction industry, as described above, has recognized the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the

provisions of Section 9(a) of the Act.² Such recognition has been embodied in articles 1.01, 1.02, and 2 of the agreement. For the period from on or about July 7, 2003, to June 30, 2005, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

On or about July 7, 2004, the Union, by letter, requested that the Respondent furnish it with the following information for the period since July 2003: (1) payroll records showing all employees and their hours and earnings; (2) foremen's logs; and (3) daily or weekly time-cards.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit.³

Since on or about July 7, 2004, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By refusing to furnish the Union with the information requested in its July 7, 2004 letter, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information that is relevant and necessary to its role as the limited exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish

² The complaint alleges that the Respondent is a construction industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Cloture, Ltd.*, 313 NLRB 1012 (1994).

³ We construe the Union's request as pertaining to the payroll and other records of unit employees, information that is presumptively relevant under Board law, although the information request is not described in these specific terms. See *Freyco Trucking, Inc.*, 338 NLRB 774 fn. 1 (2003). Moreover, the Union's letter requesting the information stated that the Union sought the information in order to confirm whether the Respondent was violating the parties' collective-bargaining agreement, which would apply only to unit employees.

the Union with the information it requested on July 7, 2004.

ORDER

The National Labor Relations Board orders that the Respondent, Pro-Tec Fireproofing, Inc., Ridgefield, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish Operative Plasterers and Cement Masons International Association, Local 797, AFL-CIO with information necessary for and relevant to the performance of its duties as the limited exclusive collective-bargaining representative of the employees in the appropriate bargaining unit referred to in articles 1.01 and 1.02 of the collective-bargaining agreement between the Union and the Associated General Contractors, Las Vegas Chapter, effective from July 1, 2002 to June 30, 2005.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested by letter dated July 7, 2004, which has been construed by the Board as information regarding unit employees only.

(b) Within 14 days after service by the Region, post at its facility in Ridgefield, Washington, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 7, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 29, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish the Operative Plasterers and Cement Masons International Association, Local 797, AFL-CIO with information necessary for and relevant to the performance of its duties as the limited exclusive collective-bargaining representative of the employees in the appropriate bargaining unit referred to in articles 1.01 and 1.02 of the collective-bargaining agreement between the Union and the Associated General Contractors, Las Vegas Chapter, effective from July 1, 2002 to June 30, 2005.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested by letter dated July 7, 2004.

PRO-TEC FIREPROOFING, INC.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."